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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;
16 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; and SBC PORTFOLIO FUND,
17 LLC,

18 Defendants.

Case No. 5:12-CV-03237-EJD

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S RESPONSE
TO ORDER TO SHOW CAUSE RE: ENTRY
OF JUDGMENT (Dkt. No. 1000)**

Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

1 Plaintiff Securities and Exchange Commission (“SEC”) respectfully responds to the Court’s
2 Order to Show Cause re: Entry of Judgment. (Dkt. No. 1000.) The SEC does not believe that it is
3 appropriate at this time to enter final judgment against the entities in receivership, specifically
4 Defendants Small Business Capital Corp. (“SBCC”), Investors Prime Fund, LLC (“IPF”), and SBC
5 Portfolio Fund, LLC (“SPF”) (collectively, “Receivership Entities”), because those claims have not
6 been adjudicated and the remedies, including the amount of disgorgement, have not been
7 determined. However, the Court has fully adjudicated the SEC’s claims against Defendant Mark
8 Feathers on summary judgment, and therefore the SEC has no objection to a final judgment being
9 entered against Defendant Feathers. The SEC proposes that a final judgment is appropriate against
10 Defendant Feathers in the form submitted with the SEC’s remedies motion. (*See* Dkt. No. 602-3.)

11 The SEC’s motion for summary judgment referred to in the Court’s Order to Show Cause
12 was against Defendant Feathers only. (*See* Dkt. No. 477.) The SEC’s motion did not address
13 liability of, or disgorgement from, the Receivership Entities. Likewise, the SEC’s subsequent
14 motion for injunctive relief and monetary remedies against Defendant Feathers (Dkt. No. 602) only
15 sought remedies against Feathers, and did not address remedies against the Receivership Entities.
16 In its Order Granting in Part and Denying in Part Plaintiff’s Motion for Injunctive Relief and
17 Remedies, the Court imposed relief only against Feathers, and not against the Receivership Entities.
18 (Dkt. No. 622.)

19 The SEC has not sought judgment or remedies against the Receivership Entities because
20 among other things, the amount of disgorgement from the Receivership Entities has not yet been
21 determined, and moreover, the disgorgement obligation of the Receivership Entities may be deemed
22 satisfied by the amount collected and distributed by the Receiver. In addition, the SEC has not yet
23 requested a specific civil penalty to be assessed against the Receivership Entities. The SEC
24 anticipates that, at the close of the receivership, and with the Court’s approval, it would enter into a
25 settlement with the Receiver that would resolve the SEC’s claims against the Receivership Entities,
26 provide for injunctive relief, resolve the disgorgement claim, and resolve the SEC’s claim for civil
27 penalties from the Receivership Entities.

1 Therefore, for ease of administration and final resolution of the claims against the
2 Receivership Entities, the SEC respectfully requests that the Court not enter final judgment against
3 the Receivership Entities at this time, and allow the Receiver to complete his administration of the
4 estate at which point the SEC and the Receiver may be in a position to present a resolution to the
5 Court that will resolve the claims for injunctive relief, resolve the amount of disgorgement, and
6 resolve the request for civil penalty.

7
8 DATED: January 15, 2015

Respectfully submitted,

9
10 /s/ John B. Bulgozdy

John B. Bulgozdy

Lynn M. Dean

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On January 15, 2015 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S RESPONSE TO ORDER TO SHOW CAUSE RE: ENTRY OF JUDGMENT (Dkt. No. 1000)** on all the parties to this action addressed as stated on the attached service list:

[X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[] **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

[X] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[X] **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

[] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: January 15, 2015

/s/ Javier Delgadillo
Javier Delgadillo

SEC v. SMALL BUSINESS CAPITAL CORP, et al.
United States District Court – Northern District of California
San Jose Division
Case No. 5:12-CV-03237-EJD
LA-4141

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